

KOBRE & KIM

800 THIRD AVENUE
NEW YORK, NEW YORK 10022
WWW.KOBREKIM.COM
TEL +1 212 488 1200

December 1, 2021

BY ECF

Hon. Valerie E. Caproni
United States District Court
Southern District of New York
40 Foley Square
New York, NY 10007

**RE: SingularDTV GmbH v. Zachary LeBeau and Kimberly Jackson –
Docket No. 1:21-CV-10130-VEC**

Dear Judge Caproni:

On behalf of Plaintiff SingularDTV GmbH, I write in response to this Court's Order to Show Cause and Temporary Restraining Order dated December 1, 2021 (the "TRO") (Dkt. No. 21), and specifically the Court's instruction that the Parties "meet and confer regarding appropriate language for the Court to include in a modified TRO that would address restoring Plaintiff, its employees and contractors' access to their email accounts or addresses."

The Parties have met and conferred regarding proposed language for the modified TRO but have been unable to reach a mutual agreement. Plaintiff's proposed language is as follows:

* * *

Defendants are ORDERED to immediately provide, or cause to be provided, to Patrik Allenspach full and unrestricted administrative access to and control over e-mail accounts (meaning, by way of example, inboxes, sent e-mails and all other e-mail folders, folder structures, calendars or calendar entries, task lists, and/or all associated attachments and files (all together, an individual's "E-mail Account")) used by the following persons:

- Patrik Allenspach (Resident Signatory for SingularDTV GmbH)
- Arie Levy Cohen (former Chief Financial Officer to SingularDTV GmbH)

Hon. Valerie E. Caproni

December 1, 2021

Page 2

- Iwona Popieluch / Iwona Schwartz (former Chief Financial Officer to SingularDTV GmbH)
- Martin Trepp (former Chief Financial Officer to SingularDTV GmbH)
- Joseph Lubin (Chief Technology Officer to SingularDTV GmbH)
- Amrita Rizal (former compliance officer to SingularDTV GmbH)
- Victoria Maksheeva (former compliance officer to SingularDTV GmbH)
- Alicja Popieluch / Alicja Gniady (former accountant to SingularDTV GmbH)
- Simon Walti (former legal counsel to SingularDTV GmbH)
- Elanie Marais (former head of Human Resources to SingularDTV GmbH)

It is FURTHER ORDERED that Defendants, and others acting on their direction or behalf, are to immediately refrain from accessing, or interfering with SingularDTV GmbH's access to, any of the above E-mail Accounts;

It is FURTHER ORDERED that Defendants shall provide, or cause to be provided, to Patrik Allenspach read-only access to E-mail Accounts used by the following persons acting in their capacity as officers or directors of SingularDTV GmbH:

- Kim Jackson (in her capacity as former COO)
- Zach LeBeau (in her capacity as former CEO)

* * *

During the Parties' meet and confer, opposing counsel objected to the above proposed language on the ground that it includes former GmbH employees and is not limited to current SingularDTV GmbH employees. According to opposing counsel, it "makes no sense" and there is "no business rationale" for returning former employees' e-mail accounts to the Company because such accounts are "not necessary" to SingularDTV GmbH's ongoing business operations.

SingularDTV GmbH respectfully disagrees. Returning these former employees' e-mail accounts to SingularDTV GmbH is necessary to prevent irreparable harm by (i) ensuring business continuity and record retention; and (ii) preventing unauthorized access to sensitive company information and trade secrets.

By way of contrast, opposing counsel has proposed the following language: "Defendants are to restore Plaintiff, its employees and contractors' access to their SingularDTV GmbH email accounts by (). Defendants shall not access the email accounts of the GmbH, its employees

Hon. Valerie E. Caproni

December 1, 2021

Page 3

and contractors. Likewise, Plaintiff, it's employees and contractors shall not access the email accounts of Defendants, SingularDTV, LLC, it's employees and contractors."

SingularDTV GmbH objects to opposing counsel's proposed language on at least three grounds: (i) it would not restore access to e-mail accounts for SingularDTV GmbH's former employees and contractors; (ii) it would allow Defendants to continue accessing SingularDTV GmbH's e-mail accounts through other persons acting on their behalf; and (iii) it is ambiguous insofar as it does not identify the specific individual e-mail accounts subject to the order.

Respectfully Submitted,

/s/ Benjamin J. A. Sauter

Benjamin J. A. Sauter

Telephone: (212) 488-1200